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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 970

BROTHERHOOD OF RAILROAD TRAINMEN, AN UNINCORPORATED ASSOCIATION,

Appellant,

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY, THE CHESAPEAKE AND OHIO RAILWAY COMPANY, ERIE RAILROAD COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

STATEMENT AS TO JURISDICTION

E. DOUGLAS SCHWANTES,
Counsel for Appellant.

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Appellant,

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY, THE CHESAPEAKE AND OHIO RAILWAY COMPANY, ERIE RAILROAD COMPANY, GRAND TRUNK WESTERN RAILROAD COMPANY, THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, PERE MARQUETTE RAILWAY COMPANY, AND WABASH RAILROAD COMPANY,

Plaintiffs-Appellees,

INTERSTATE COMMERCE COMMISSION,

Intervening Plaintiff-Appellee,

THE CHICAGO RIVER AND INDIANA RAILROAD COMPANY, CHICAGO JUNCTION RAILWAY COMPANY, AND THE NEW YORK CENTRAL RAILROAD COMPANY,

Defendants-Appellees.

JURISDICTIONAL STATEMENT PURSUANT TO SUPREME COURT RULE 12

The basis on which it is contended, on behalf of the Brotherhood of Railroad Trainmen, that the Supreme Court of the United States has jurisdiction on appeal to review

the order of the District Court entered herein on November 7, 1946 denying the motion of the Brotherhood of Railroad Trainmen to intervene herein, is as follows:

1. Statutory Provisions Sustaining Supreme Court Jurisdiction

Plaintiff's Complaint discloses that this is a suit to enforce an order of the Interstate Commerce Commission other than for the payment of money. Plaintiffs rely on a condition in an order of the Interstate Commerce Commission of May 16, 1922 providing that "present traffic and operating relationships" existing between plaintiff and defendant carriers "shall be continued." It is contended by plaintiffs that this condition requires that they be permitted to move certain cars over the lines of defendant The Chicago River and Indiana Railroad Company, hereinafter referred to as the River Road, *with plaintiffs' own power and crews,* and that the practice of the River Road, commenced February 1, 1946, of using its power and crews for such work is violative of the above order. A mandatory injunction is sought to compel the River Road and its employees to permit plaintiffs to accomplish such movements with the plaintiffs' own power and crews.

The Judicial Code, Section 238 (28 U. S. C. A. 345) provides in part as follows:

> "Appellate jurisdiction from decrees of United States district courts. A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following sections or parts of sections and not otherwise:
>
> • • • • • • •
>
> "(4) So much of sections 47 and 47a of this title as relates to the review of interlocutory and final judg-

ments and decrees in suits to enforce, suspend, or set aside orders of the Interstate Commerce Commission other than for the payment of money."

Section 47a of the Title 28 provides in part as follows:

"Appeal to Supreme Court from final decree; time for taking; priority. A final judgment or decree of the district court in the cases specified in section 44 of this title may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases . . . Appeals to the Supreme Court under this section and section 47 of this title shall have priority in hearing and determination over all other causes except criminal causes in that court."

Section 44 of the same title provides in part as follows:

"Procedure in certain cases under interstate commerce laws; service of processes of court. The procedure in the district courts (a) in respect to cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money shall be as provided in sections 45, 45a, 47a, and 48 of this title. . . . ."

2. Order Sought to Be Reviewed

The order denying the motion of the Brotherhood of Railroad Trainmen to intervene as a party defendant was entered by the District Court on November 7, 1946, as appears from the transcript of record herein at page 208. The motion of the Brotherhood to vacate that order was denied on November 26, 1946, as appears from the transcript of record at page 210. No opinion was delivered by

the District Court upon the rendering of said order of November 7, 1946. Said order is as follows:

> "Motion of Brotherhood of Railroad Trainmen for leave to intervene denied."

Appeal from said order of November 7, 1946 by said Brotherhood is by application presented on January 6, 1947, as appears from the transcript of record herein at page 244.

3. Nature of Case and Appealability of Order Denying Intervention

As above indicated, this suit, filed February 12, 1946, sought, *inter alia*, an injunction against the defendant railroads and their employees, commanding them to permit plaintiff railroads to move empty cars for loading livestock other than hogs and sheep with plaintiffs' own power and crews over the lines of defendant River Road, and, after such cars have been loaded, to move them over the lines of the River Road to plaintiffs' lines. The Complaint alleged that on or about January 25, 1946 defendant River Road notified plaintiffs that from February 1, 1946 such movement of cars would be performed by the power and crews of the River Road, and that thereafter the River Road and its employees refused to permit their lines to be so used by plaintiffs with plaintiffs' own power and crews, and that the River Road required that such movements be accomplished with the power and crews of the River Road.

On March 14, 1946 a preliminary injunction was granted against defendant railroads and their employees as prayed for in plaintiffs' Complaint. Neither the employees of the defendant railroads nor any of their representatives were made parties to this suit, and no notice of plaintiffs' application for an injunction was served on them.

On May 20, 1946 the Brotherhood of Railroad Trainmen, as representative of employees as trainmen of the defendant River Road, filed its motion to intervene as a party defendant, alleging that such employees, or their representative, are indispensable parties; that an unconditional right to intervene is conferred upon them by Federal statute; that the representation of said employees by the then parties was inadequate; and that said employees are or might be bound by a judgment in the suit within Rule 24(a), Intervention of Right, of the Rules of Civil Procedure for District Courts of the United States. This motion disclosed that prior to the institution of this suit, said Brotherhood, as collective bargaining representative for all persons employed as trainmen by defendant River Road, had entered into a written agreement with that railroad under the terms of which such employees are entitled to perform all work done by trainmen on the lines of that railroad. This motion set forth that the primary purpose and effect of this suit is to nullify the said employment contract and the rights of the trainmen thereunder, and that without notice or opportunity to be heard, they had been deprived by injunction from performing the work to which they are entitled under their employment contract. The Brotherhood prayed leave to intervene as a defendant and to file instanter its motion to vacate the preliminary injunction, to assess damages against plaintiffs, and for summary judgment.

The facts as above outlined were set forth in the motion of said Brotherhood to intervene and in the proposed pleadings and affidavits attached thereto and have not been disputed.

The District Court order of November 7, 1946 denying the motion of the Brotherhood to intervene as a matter of right disposes of this case in so far as the Brotherhood is concerned and it is therefore a final judgment or decree

within the meaning of the jurisdictional statutes above cited providing for direct review by the Supreme Court.

Missouri-Kansas Pipe Line Company v. *United States*, 312 U. S. 502, 85 L. Ed. 975, 61 S. Ct. 666 (1941); *State of Washington* v. *United States*, 87 F. (2d) 421 (1936).

4. Substantial Questions Involved

The substantial questions involved on this appeal include the following:

(a) Whether an employment contract made by a railroad carrier with its employees, acting through their bargaining representative in accordance with the Railway Labor Act, gives to such employees or their representative the right to be made a party and to be heard in a suit brought by other carriers, the effect of which is to enjoin the performance of that employment contract.

(b) Whether in a suit brought against a railroad carrier wherein it is contended that performance of a contract between the carrier and its employees is violative of an order of the Interstate Commerce Commission, the employees with whom such contract was made are entitled to intervene and be heard on the question whether any such violation exists.

(c) Whether employees of a railroad carrier, having been prevented by injunction from performing work under a contract with their employer, are entitled to intervene and be heard in the proceeding wherein such injunction was issued, and to move the Court to vacate such injunction for failure to join indispensable parties and for failure to comply with the Federal statutes regarding issuance of injunctions in labor disputes.

(d) Whether Section 17(11) of the Interstate Commerce Act, Chapter 1 (49 U. S. C. A. 17(11)), providing that rep-

resentatives of employees of a carrier may intervene and be heard "in any proceeding" arising under that chapter "affecting such employees," confers an unconditional right upon the representative of employees of a carrier to intervene in a suit brought under that chapter to enjoin performance of an employment contract between the carrier and its employees.

(e) Whether Sections 212 and 213 of the Judicial Code (28 U. S. C. A. 45a), providing that associations interested in a suit brought by anyone relating to action by the Interstate Commerce Commission may intervene in said suit, confers an unconditional right upon an employees' association to intervene in a suit based on an Interstate Commerce Commission order wherein it is asserted that enforcement of said order requires an injunction against performance of an employment contract between a carrier and its employees.

(f) Whether adequate representation guaranteed to all interested parties by Rule 24(a) of the Rules of Civil Procedure for District Courts of the United States requires allowance of intervention by employees of a railroad carrier in a suit against such carrier brought to nullify a contract between it and its employees wherein such carrier has stated frankly that it does not act for or represent its employees in such suit.

It is, therefore, respectfully submitted that this Court has jurisdiction of this appeal.

Dated: January 4, 1947.

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